

### REMARKS

Claims 1-23 currently remain in the application. Applicants respectfully request reconsideration in view of the following remarks.

Applicants thank the Examiner, and his Supervisor Chau Nguyen, for the courtesies extended during the telephonic interview with Applicants' representative on March 21, 2006. During this interview, the Woodhead reference was discussed.

#### Rejection under 35 U.S.C. § 102

Claims 1-7, 9-14 and 17-21 were rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 5,640,388 to Woodhead et al. (referred to herein as 'Woodhead'). Applicants respectfully traverse.

The present invention preserves the timing relationship of the data, as the data was received, but first creating timestamp and then transmitting the timestamp onto a channel. Specifically, independent claim 1 recites "a processing apparatus configured to ... create a timestamp including timing information that describes the timing relationship of the data as the data was received". Element 3 of claim 1 also recites "the output bitstream including the timestamp and the data including jitter". The timestamp included in the output bitstream in element 3 clearly refers to the timestamp of element 2. By proper antecedent basis then, the timestamp included in the output bitstream in element 3 includes the "timing information that describes the timing relationship of the data as the data was received" and all limitations of the timestamp referred to and described in element 2. Thus, the present invention **outputs a timestamp including timing information that describes the timing relationship of the data as the data was received**, according to proper antecedent basis and claim interpretation.

Woodhead does not output a timestamp including timing information that describes the timing relationship of the data as the data was received.

First, Woodhead's opposing methodology will be briefly refreshed, to illuminate the disparate nature of this reference relative to the claimed invention. Woodhead notes that packets "arrive at a destination 'jittered' with respect to their PCRs" and that "the PCRs no longer accurately reflect the timebase of a Program" (see col. 6 lines 4-13). He thus sees a need to **remove jitter and correct** timestamp values received in a network (see col. 6 lines 14-18). Correspondingly, Woodhead invents a system that **corrects** (see col. 7 lines 55-60) "corrupted"

timestamps (see col. 7 lines 19-21) received from a network. Col. 9, lines 1-5 explicitly states that "PCR values carried in the Transport Packets must be corrected".

Correspondingly, Woodhead disposes of the incoming and corrupted timestamp and creates a NEW timestamp. The new timestamp replaces the corrupted timestamp. Importantly, the new timestamp, which is later output, does not include "timing information that describes the timing relationship of the data as the data was received". As one of skill in the art will appreciate, the mathematical operations used by Woodhead to create the new timestamp are all state functions; once Woodhead's new timestamp has been created, the timing relationship of data as it was received is irretrievably lost.  $A+B=C$  is a state function when all only C is known; A and B are lost once C is output from Woodhead's intermediate site. As an illustrative example, if  $C=156550$ , then A and B are unknowns once C is output from the intermediate site (and thus, C does not describe A). Woodhead teaches numerous equations for creating timestamps:  $PCR_B' = PCR_B + \Delta T_M$  (see col. 4 line 37) and numerous equations between columns 13 and 18. Notably, all these mathematical changes to Woodhead's incoming and corrupted timestamps are state functions. Since the processing delay in Woodhead's intermediate site is variable (B), the incoming timing data (A) **cannot be determined from C when only C is output by Woodhead's intermediate site**. In the  $A+B=C$  analog, Woodhead only outputs C (his new timestamp); the present invention preserves A (element 2 of claim 1) and outputs A (element 3 of claim 1). Thus, once Woodhead creates his new timestamp, the incoming data has been lost and he does not output a timestamp including timing information that describes the timing relationship of the data as the data was received as recited in elements 2 and 3 of independent claim 1.

The Office Action uses the "new PCR [of Woodhead], which includes old PCR and transit time" to teach a "timestamp including timing information that describes the timing relationship of the data as the data was received" (see page 2 of the Office Action). However, independent claim 1 outputs the timestamp that includes timing information that describes the timing relationship of the data as the data was received. Woodhead does not output such a timestamp. As logically described above, Woodhead intentionally and irretrievably loses incoming corrupted timing information using numerous state functions.

Not only does Woodhead fail to anticipate the claimed invention, the assertion in the Office Action that Woodhead outputs a timestamp, including timing information that describes the timing relationship of the data as the data was received, fully contradicts the reference. Woodhead repeatedly mentions a need to **expunge** the incoming **corrupted** timestamps (see col.

3, lines 42-49, col. 6 lines 4-13, col. 6 lines 14-18, and col. 9, lines 1-5). The reference clearly teaches against keeping – and re-transmitting as recited in the claim – timing information that describes the timing relationship of the data as the data was received.

For at least these reasons, Applicants respectfully submit that Woodhead does not teach all limitations in independent claim 1 and that independent claim 1 is allowable.

Independent claims 9, 20 and 22 include similar limitations to independent claim 1 and are patentable for at least the reasons described above.

Claims 2-7 and 10-14, 17-19, 21 and 23 each depend either directly or indirectly from independent claims 1, 9, 20 and 22 and are patentable over the art of record for at least the reasons set forth above with respect to the independent claims.

Withdrawal of the rejection under 35 U.S.C. § 102(e) is therefore respectfully requested.

Rejection under 35 U.S.C. § 103

Claims 2 and 23 were rejected under 35 U.S.C. 103(a) as being unpatentable over Woodhead in view of US Patent No. 6,002,687 to Magee (referred to herein as ‘Magee’).

Claims 8, 15 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Woodhead in view of US Patent No. 6,323,789 to Lawrence et al. (referred to herein as ‘Lawrence’).

Applicants still dispute the use of Woodhead in any obviousness-type rejection of the claims since, per the MPEP, this would oppose the rules for using a reference in an obviousness rejection. Woodhead teaches against the present invention. Woodhead clearly and repeatedly teaches a need to eliminate faulty timing relationships that are received by his intermediate transmission sites. The present invention, however, preserves timing relationships as received by a network device, and creates and outputs timestamps using the timing relationship of data as the data was received. Oppositely, Woodhead repeatedly asserts that the intermediate site must eliminate “corrupted” timestamps as received by an intermediate site. Per MPEP 2141.02, “**A Reference Must be Taken in its Entirety, Including Those Portions that Teach Away from the Claims and Argue Against Obviousness**”. The reference both teaches against the claims AND argues against obviousness. It is respectfully submitted that, per the MPEP, the claims cannot be held as obvious relative to Woodhead, either alone or in combination, when he openly disparages the claims and teaches against the invention.

On page 9 of the Office Action, the Examiner replies to this MPEP rule violation by re-asserting arguments for claim 1 and asserting "Therefore, the dependent claims can be held as obvious relative to Woodhead since Woodhead teaches all the limitations in the independent claim 1." Applicants respectfully traverse this statement. First, dependent claims are not obvious in view of Woodhead if the Office Action asserts that Woodhead purportedly teaches an independent claim – the dependent claims include additional limitations to be considered separately as a matter of law and rules (and the Office Action previously considered them separately as indicated by previous use of Magee and Lawrence to overcome omissions in Woodhead), so the dependent claims are not obvious relative to Woodhead or claim 1 since the Examiner previously admitted to needing other references to reject these dependent claims. Second, Applicants respectfully submit that language in claim 1 (or rejection of claim 1) is unrelated to whether the reference must be considered in its entirety per MPEP 2141.02. The Examiner's assertion thus does not counter the rule that **"A Reference Must be Taken in its Entirety, Including Those Portions that Teach Away from the Claims and Argue Against Obviousness"**, which remains unchallenged despite the comments made in the Office Action.

The Office Action also replies "that Woodhead preserves old PCR and creates new PCR to keep the timing relationships as received by a network device for the purpose of eliminating jitter". Applicants respectfully traverse this statement as well. Woodhead does not preserve old PCR as asserted (see state function remarks made above). In addition, Applicants can discern no meaningful connection of this statement to the claims. The claims do not eliminate jitter. They output data with jitter, as recited; so Woodhead's desire to eliminate jitter has no bearing on the claimed invention, which works despite jitter.

For at least these reasons, Applicants respectfully submit that Woodhead still teaches against the claimed invention and that the proposed combinations using Woodhead violates the rules for combining reference according to § 103 of the MPEP.

In addition, claims 2, 8, 15, 16 and 23 each depend either directly or indirectly from independent claims 1, 9 and 22 and are patentable over the art of record for at least the reasons set forth above with respect to the independent claims.

Withdrawal of the rejections of under 35 U.S.C. § 103(a) is therefore respectfully requested.

Applicants believe that all pending claims are allowable and respectfully requests a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below.

Respectfully submitted,

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